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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,160	10/26/2001	John J. Jordan	41872/248921	2738
7590	12/10/2003			
J. Jason Link Kilpatrick Stockton LLP 1001 West Fourth St. Winston-Salem, NC 27101			EXAMINER BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/014,160	JORDAN, JOHN J.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 and 30-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2, 4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12 and 21-29, drawn to a sausage, classified in class 426, subclass 76.
 - II. Claims 13-20, drawn to a method of producing split sausage links, classified in class 426, subclass 518.
 - III. Claims 30-56, drawn to an apparatus, classified in class 99, subclass 537.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product of group I as claimed can be made by another and materially different process, for instance by slicing the sausage manually, rather than automatically.
3. Inventions I and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this

case the product of group I as claimed can be made by another and materially different apparatus, for instance a hand wielded knife.

4. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of group III can be used in another and materially different process, for instance slicing rolls or bagels.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II-III, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Jason Link on December 2, 2003 a provisional election was made with traverse to prosecute the invention of group I, claims 1-12 and 21-29. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-20 and 30-56 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

8. Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 12 is a copy of parent claim 6.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-12 and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gagliardi Jr [Pat. No. 5,069,914].

Gagliardi Jr teaches a pre-sliced sausage link comprising an interior of ground beef (column 3, line 9), an outer casing which acts as a hinge (Figure 4, #20), and a longitudinal slice with a depth of 70-80% (Figure 4, #32 & 34). Phrases such as “automatically slicing...” are merely preferred methods of making the claimed product.

11. Claims 1-12 and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Dettman [Pat. No. 2,520,000].

Dettman teaches a pre-sliced sausage link comprising an interior of ground meat (Figure 3, shaded), an outer casing which acts as a hinge (Figure 2, surrounding

shaded area), and a longitudinal slice with a depth of 70-80% (Figure 2, #13). Phrases such as "automatically slicing..." are merely preferred methods of making the claimed product.

12. Claims 1, 6-7, 12, 21, and 24-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolton [Pat. No. 2,643,414].

Bolton teaches a pre-sliced sausage link comprising an interior of ground beef (Figure 2, #12), an outer casing which acts as a hinge (Figure 2, #11), and a longitudinal slice (Figure 3, #12-13). Phrases such as "automatically slicing..." are merely preferred methods of making the claimed product.

13. Claims 1-12 and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Pesce [Pat. No. 2,675,580].

Pesce teaches a pre-sliced sausage link comprising an interior of ground beef (Figure 11, #22), an outer casing which acts as a hinge (Figure 11, outer surface), and a longitudinal slice with a depth of 70-80% (Figure 10, #36). Phrases such as "automatically slicing..." are merely preferred methods of making the claimed product.

14. Claims 1-12 and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Abel [Pat. No. 2,776,480].

Abel teaches a pre-sliced sausage link comprising an interior of ground beef (Figure 1, #13), an outer casing which acts as a hinge (Figure 1, surrounding the interior), and a longitudinal slice with a depth of 70-80% (Figure 4, #14). Phrases such as "automatically slicing..." are merely preferred methods of making the claimed product.

15. Claims 1, 6-7, 12, 21, and 24-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Alea [Pat. No. 3,465,802].

Alea teaches a pre-sliced sausage link comprising an interior of ground beef (Figure 1, F), an outer casing which acts as a hinge (Figure 1, surrounding F), and a longitudinal slice (Figure 1, S). Phrases such as "automatically slicing..." are merely preferred methods of making the claimed product.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gagliardi Jr [Pat. No. 5,976,585], Fleetham [Pat. No. 6,652,894], and Piel [Pat. No. 3,786,703] teach sliced hotdogs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker
Examiner
Art Unit 1761